IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 1084 OF 2007

Nirala Education Society
and three others. :: PETITIONERS

-: Versus :-

Jugalkishore Bhagwatiprasad Shukla
and two others :: RESPONDENT

CORAM: R. V. MORE, J.
DATED: 02nd April, 2007.

P.C. :

1. Heard Mr. V. V. Bhangde, senior learned Counsel for the petitioners.

2. The petition takes exception to the order of the School Tribunal whereby delay of 2 years 7 months came to be condoned which occurred in filing appeal under Section 9 of the Mah. Employees of Private Schools (Conditions of service) Regulation Act, 1978 (for short; the Act).

3. The contention of the petitioners that the first respondent came to be appointed in the year 1991-92. His services came to be terminated

at the end of academic year 1993 and fresh advertisements were issued. The respondent applied, however was not selected and petitioner No. 3 was selected. It was further contention that the first respondent for the period 1993-94 joined another institution and thereafter present appeal under Section 9 was filed on 15/11/1994 i.e. after the delay of 2 years 7 months.

4. The contention of the petitioners is that the ground about representation which respondent No. 1 was making to the Deputy Director is after thought and the same is not proved and, therefore, cannot be construed as sufficient cause. Learned Counsel for the petitioners relied upon a letter of the Deputy Director of Education issued in the month of March, 2007 which is annexed at page No. 57. This letter reveals that the first respondent has not made any correspondence with the office of the Deputy Director of Education on the dates mentioned therein.

5. Learned Counsel for the petitioners relied upon the decision of the Supreme Court in the case of M.S. Madhusoodhanan and another vs. Kerala Kaumudi (P) Ltd. and others – (2004) 9 Supreme Court Cases 204 and Single Bench decision of this Court in the case of Secretary, Jamnadas Adukia Charity Trust vs. Chintamani Brijaprasad Dubey – 2002 (2) Mh. L. J. 267. I have gone through the impugned order and also ratio of the

decision relied upon by the learned Counsel and in my considered view the impugned order does not deserve any interference in jurisdiction under Article 227 of the Constitution.

6. The learned Member of the School Tribunal in para 7 of the impugned order has clearly mentioned that respondent No. 1 has already placed on record copies of various representations addressed to the Deputy Director of Education along with the postal certificate dated 13/5/1994 issued by the Postal department. The learned Tribunal also recorded the finding that the Deputy Director of Education has not specifically denied the contention of respondent No. 1 regarding the representations.

7. As far as the letter mentioned above is concerned, it was issued in pursuant to the application made by the petitioners on 23/02/2007, i.e. after 20/2/2007 on which date the petitioners' application for condonation of delay was disposed of. In any case, this application was made after a period of about 15 years and the office of the Deputy Director of Education is not expected to trace out the representations which allegedly were made in the year 1992-93. In view of this, I am of the opinion that much reliance cannot be placed on the letter of the Deputy Director of Education which is at page 57 and marked as annexure-6.

8. So far as the reliance placed by the learned Counsel on the ratio

in the case of *M.S. Madhusoodhanan vs. Kerala Kaumudi (P) ltd*. (cited supra) is concerned, there is no dispute with the ratio of this decision that it is in common knowledge, certificates of posting are notoriously easily available. However, in the present case the representations itself were placed on record and, therefore, this ratio of the decision is not applicable to the present facts and circumstances of the case.

9. In my view the decision rendered by the learned Single Judge in the case of *Secretary, J.A.C. Trust vs. Chintamani* (cited supra) is also cannot be made applicable in present facts. The learned Counsel placed his reliance on page 270 para 7. The learned Single Judge, in the above judgment considering the case of the employee who had approached *Lokayuktya,* and was directed to approach the School Tribunal. The delay in that case was more than four years. In the present case the respondent approached the Deputy Director of Education, who is departmental head having supervision on petitioner and respondent. The respondent bonafidely approached the Deputy Director of Education by making representation for redressal of his grievances.

10. In any case, the representation relied on only for the purpose of condonation of delay and to show that there was sufficient cause for respondent No.1 for not filing appeal under Section 9 of the Act. The

merits of the matter will be considered independently. The learned Member of the School Tribunal has exercised his discretion by condoning the delay. In the opinion of the learned Member of the School Tribunal, sufficient cause is shown by respondent No. 1. I am not inclined to interfere in the discretion exercised by the learned Member of the School Tribunal. In the circumstance, the writ petition fails, same is, therefore, dismissed with no order as to costs.

11. The learned counsel for the petitioners, at this stage, prays that stay be continued for a period of four weeks in order to enable him to challenge this order.

12. Initially the stay was granted and though I have dismissed this writ petition on merit, in the interest of justice, the stay is continued for a period of two weeks.

JUDGE

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